

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

C.W.P. No.712 of 2007

Date of Decision: 6.11.2007

Smt.Vijay Shakti

.....Petitioner

Vs.

Union of India and others

...Respondents

....

CORAM : HON'BLE MR.JUSTICE UMA NATH SINGH
HON'BLE MR.JUSTICE RAJIVE BHALLA

Present : Mr.Ashok Jindal, Advocate for the petitioner.
Ms.Navender P.Singh, Advocate for UOI.
Ms.Gurveen H. Singh, Addl.A.G. Punjab.

...

RAJIVE BHALLA J

The petitioner, prays for the issuance of a writ in the nature of Certiorari for quashing of the order dated 14.7.2000 passed by the Under Secretary, Government of India (Annexure P-7), by which the petitioner's claim for grant of Swatantrata Sainik Samman Pension (hereinafter referred to 'SSS Pension') has been rejected and order dated 30.11.2006, passed by the Joint Secretary, Freedom Fighters, Punjab (Annexure P-11), by which the pension, which has been received by the petitioner has been stopped.

It is further prayed that a writ in the nature of Mandamus, directing the respondents to grant the SSS Pension to the petitioner, be issued.

The petitioner, who is aged 76 years was married to one Sh.Vidya Sagar in the year 1943. The petitioner alleges that her husband was a freedom fighter and actively participated in the 'Parja Mandal Freedom Movement', in the Princely State of Faridkot. Her husband was

incarcerated in jail, for his activities. After independence, Sh.Vidya Sagar, applied for grant of a freedom fighter pension, but as he passed away on 22.12.1988, his claim could not be settled.

After her husband's demise, the petitioner pursued the matter under a scheme prepared by the Government of India. The petitioner continued to pursue the matter with various authorities, including the Deputy Commissioner, Patiala, as also made attempts to locate the documents required. She eventually, filed an application dated 21.3.1991, stating therein that her husband had participated in the 'Quit India Movement' in the year 1942, in the 'Parja Mandal Movements, the 'Military Disobedience Movement' in 1947 and the 'Faridkot Satyagrah' in 1946. As a result, warrants of arrest was issued by the police compelling her husband to remain underground from 2.5.1946 to January 1947, under the orders of Puran Chand, Advocate, founder of the 'Parja Mandal Movement' and Pandit Rameshwar Dutt, organiser of the Jathas of 'Faridkot Satyagrah' and 'Parja Mandal Agitation' in Patiala State. In recognition of Sh.Vidya Sagar's contribution to the freedom struggle, he was issued a certificate by Giani Zail Singh, the ex-President of India.

The petitioner's case was considered by the Punjab Government and vide letter dated 16.11.1995, the Deputy Commissioner, Patiala, was directed to verify and hold an enquiry into the facts, detailed in the petitioner's application. The Deputy Commissioner, entrusted the enquiry to the Sub Divisional Officer and vide letter dated 12.8.1996, submitted a report to the Under Secretary, Government of Punjab, with a recommendation that the applicant be granted pension. The Punjab Government, thereafter, sanctioned the pension to the petitioner and referred

the petitioner's case for grant of pension under the Central Government scheme, to the Under Secretary, Government of India, Ministry of Home Affairs, vide letter dated 6.11.1996. The Under Secretary, Government of India directed the petitioner to forward the original certificate issued by Giani Zail Singh. The petitioner forwarded the said certificate to the Under Secretary concerned, but no action was taken.

Vide letter dated 24.12.1997, the Government of India sought certain clarifications from the Government of Punjab. In reply, the Under Secretary, Freedom Fighters, Government of Punjab, clarified the objections vide letter dated 15.4.1999 and specifically mentioned that the case was recommended, on the basis of a certificate, issued by Giani Zail Singh (former President of India) and Co-prisoner's Certificate and affidavit issued by Sh.Mansa Ram s/o Nanak Chand of Bathinda. It was further stated that many cases had been recommended by the State Government on the basis of certificates issued by Giani Zail Singh and Government of India had granted pension. The names of these persons were detailed in the letter. It was further clarified that details of warrants/court orders, showing that the petitioner's husband was an absconder, were not traceable, being old record.

Thereafter, respondent no.1, vide letter dated 14.7.2000, rejected the petitioner's claim on the ground that the petitioner's husband should have been underground only after he was wanted by the police for his activities relating to the National Struggle for freedom. It was further stated that the petitioner's husband should have been arrested by the police after coming over ground in February 1947, if his abscondence was against any executive action of the government.

As a result of the aforementioned letter, the Punjab government, issued a show cause notice dated 30.8.2005 for cancellation of the pension and informed the petitioner regarding the rejection of her claim by the Government of India. The petitioner submitted a reply dated 6.9.2005, clarifying her position and referred to the material available. The State of Punjab, however, stopped the pension being paid to the petitioner.

Counsel for the petitioner contends that the orders dated 14.7.2000 passed by the Under Secretary, Government of India and 30.11.2006 passed by the State of Punjab are illegal and void. The petitioner's prayer for grant of pension has been incorrectly rejected. It is submitted that in Civil Appeal No.6718 of 2001 **Gurdial Singh Vs. Union of India**, decided by Hon'ble the Supreme Court on 25.9.2001, it was held that the standard of proof required in such cases is not of the same standard, as required in criminal cases or in cases where rival contentions are adjudicated. It was also held that claims by freedom fighters should be decided on the principle of probabilities and not on the touch stone of the test of "beyond reasonable doubt." It is, thus, contended that as the State of Punjab had vide its letter dated 15.4.1999, specifically informed the Central Government that old records were not available, that the evidence produced by the petitioner was genuine and in many cases, pension had been granted by the Central Government on the basis of certificates issued by Giani Zail Singh, the petitioner was entitled to pension.

It is also contended that the order passed by the Central Government is discriminatory, as similarly situated persons, such as Kartar Singh Brar, Sh.Harbans Lal Dhawan have been granted pension by the Government of India, on the basis of certificates issued by Giani Zail Singh

(former President of India).

It is further argued that non production of official record, would not be fatal as held by the Hon'ble Supreme Court in **R.Narayanan Vs. Union of India and another**, 1989 Suppl.(2) SCC 581 and as the petitioners claim is genuine, the respondents should be directed to allow the prayer for pension.

The State of Punjab has filed a counter affidavit to the writ petition, whereas the Union of India, despite opportunities since 3.5.2007, has failed to file any reply. On 6.9.2007, time was once again granted but till date, no reply has been filed though the Union of India is represented by counsel.

In their counter affidavit, the State of Punjab asserts that the Government of Punjab introduced the SSS Pension Scheme 1982, vide letter No.4(55)3P2-82/19635 dated 17.8.1982 to grant pension to freedom fighters, who are inhabitants of and are living in Punjab provided they are receiving pension from the Government of India, on the recommendations of the Government of Punjab. According to the aforementioned scheme, an applicant was required to produce proof of getting pension from the Government of India, alongwith his application. Under the aforementioned scheme, a freedom fighter, who had applied for grant of pension from the Government of India, but whose cases were pending consideration were also entitled to apply for grant of pension to the Punjab Government. The petitioner was, therefore, granted pension but as her claim for pension was rejected by the Central Government, vide order dated 14.7.2000, the pension was stopped, after issuance of a show cause notice. It is further submitted that pursuant to letter No.4/8/Res.3/87/1114 dated 2.12.2004, the State of

Punjab has clarified that where a State Government has recommended grant of pension to the Central Government, but the Central Government rejects the recommendation, the Punjab State Freedom Fighter Pension would be stopped. It is asserted that as the Government of India did not accept the recommendation made by the State of Punjab, the stoppage of pension to the petitioner, cannot be faulted.

It is submitted that the Central Government declined to grant pension to the petitioner, on the ground that when the petitioner's husband came over ground in February 1947, he should have been arrested by the police, if his abscondence was against any executive action of the Government, however, this was not the case and neither any warrant nor any valid order of proclamation or any case was registered against him, the petitioner was not entitled to any pension. The certificate given by Sh.Mansa Ram, in favour of late Sh.Vidya Sagar, to the effect that the latter had remained underground from 1946 to 1947 and he was tortured was rejected.

Counsel for the State of Punjab submits that as the petitioner's application was rejected by the Central Government, the State of Punjab, rightly withdrew the pension granted by it.

Counsel for the Union of India, on the other hand, submits that as the petitioner did not fulfill the criteria, laid down in the scheme, for grant of freedom fighters pension, her claim was rightly rejected, as no material has been placed on record.

In rebuttal to the aforementioned arguments, counsel for the petitioner asserts that the documents appended with the application for grant of pension were sufficient to conclude that the petitioner's husband

was a freedom fighter. The certificates appended with the application were issued by responsible individuals, evidencing the status of the petitioner's husband and should, therefore, have been accepted. The absence of records, with respect to warrants of arrest, the FIR or orders passed by executive authorities were irrelevant. The State of Punjab had recommended the petitioner's claim for grant of pension on the basis of an enquiry duly accepted by the Deputy Commissioner and that numerous other persons were granted pension, on the basis of similar evidence, as also the certificate issued by Giani Zail Singh, therefore, the State Government as also the Central Government were not justified in declining her request to grant SSS pension.

We have heard learned counsel for the parties and perused the impugned orders.

Before we proceed to adjudicate the merits of the present controversy, it would be appropriate to notice a few facts. The petitioner, the widow of Sh. Vidya Sagar approached the State of Punjab for grant of a freedom fighters pension. Her claim was investigated, verified and found to be genuine by the State of Punjab. The Deputy Commissioner, who submitted a report to the State Government, entrusted the enquiry into the claim set out by the petitioner to the Sub Divisional Officer (Civil), Patiala. The Deputy Commissioner vide letter dated 12.8.1996, agreed with the report of Sub Divisional Officer (Civil), Patiala and recommended that the applicant be granted a pension. The said recommendation was accepted by the State of Punjab and the petitioner was granted pension. Her claim was also forwarded to the Central Government vide letter dated 6.11.1996, a relevant extract whereof reads as follows :-

“As regards political sufferings of the applicant, it is stated that her husband remained underground from 1946 to 1947 due to terror of police on account of taking active part in the Freedom Movement of Parja Mandal of Faridkot Satya Grah which is a recognised Movement. In support of her claim the applicant has produced the following documents/evidence (enclosed in original) have been got confirmed :-

- i) Her own affidavit.
- ii) A co-prisoner Certificate and an affidavit of Sh.Mansha Ram s/o Sh.Nanak Chand of Bathinda;
- iii) Certificate issued by Giani Zail Singh (former President of India);
- iv) Death Certificate of Sh.Vidya Sagar s/o Sh.Bulaki Ram.

2. The State Government have also even otherwise satisfied itself through suitable enquiries that the sufferings have been undergone genuinely. This case was not forwarded to GOI earlier due to the reason that the application has produced evidence/documents on 16.8.95.

3. The State Government recommends that Smt.Vijay Shakti w/o Late Sh.Vidya Sagar may be granted pension under Central Government Scheme.”

The petitioner's application was eventually declined by the Central Government, vide order dated 14.7.2000, by rejecting the supporting certificate/affidavit issued by Sh.Mansa Ram and by holding that when Sh.Vidya Sagar came over ground in 1947, he should have been arrested by the police but as this was not the case, the only conclusion was

that from February 1947, there was neither any warrant nor any valid order for proclamation against him and the case if any registered against him was dropped either because he was wrongly impleaded or due to tendering of an apology by him, he was given a reprieve. The aforementioned are in sum and substance the reasons assigned for declining pension to the petitioner. The State of Punjab issued a show cause notice, proposing to withdraw the pension already received by the petitioner, on the ground, that the Central Government had rejected her claim. At this stage, it would be necessary to reproduce the eligibility criteria, prescribed in the SSS Pension Scheme :-

“(1) he had suffered a minimum imprisonment of six months in the mainland jails before independence in connection with freedom struggle of the country.

(2) he furnished a certificate from the concerned authority, District Magistrate or the State Govt. indicating period of sentence awarded, date of admission, date of sentence awarded, date of admission, date of release and reasons for release in the absence of such certificate from official records, a Non-availability of records Certificate (NARC) in prescribed format from the concerned authorities alongwith Co-prisoners Certificate (CPC) as under ;-

(a) Two Co-prisoners Certificate from the freedom fighter pensioners who had a proven jail suffering of one year.

(b) One Co-prisoners Certificate from a sitting MP or MLA or from an Ex.MP or an Ex.MLA.”

Thus, as per the eligibility criteria, as set out in the aforementioned scheme, the petitioner was required to place evidence that her husband had suffered a minimum imprisonment of six months before independence in connection with the freedom struggle of the country. She was required to furnish a certificate from the concerned authority, District Magistrate or the State government, indicating the period of sentence awarded, date of admission, date of sentence awarded etc. and in the absence of any such certificate, a non availability certificate in the prescribed format from the concerned authorities alongwith co-prisoners Certificate, as detailed in the scheme.

The petitioner's claim was duly enquired by the State of Punjab and found to be in order by the Sub Divisional Officer, the Deputy Commissioner, as also by the State of Punjab. In addition to the certificate of a co-prisoner, a certificate issued by the ex-President of India, namely; Giani Zail Singh was also appended. It is not denied by either party that Giani Zail Singh was a renowned leader of the Parja Mandal Movement, which was launched in the Princely State of Punjab. The petitioner claims that her husband was an active member of the aforementioned movement. It is also not denied that on the basis of the certificates issued by Giani Zail Singh, former President of India, numerous claims as detailed herein before have been accepted by the State of Punjab, as also by the Central Government, namely; Sh. Kartar Singh Brar and Sh.Harbans Lal Dhawan. A perusal of the orders passed by the State of Punjab, as also by the Central government discloses a hypertechnical view that the authorities have taken, while considering the supporting material appended with the application.

The petitioner's claim was rejected, primarily on the ground

that the supporting affidavit of Sh. Mansa Ram refers to torture, whereas the petitioner's case does not refer to any torture in police custody. The affidavit should have been considered in the light of Civil Appeal No.6718 of 2001 **Gurdial Singh V. Union of India and others.** The Hon'ble Supreme Court observed as follows :-

“The standard of proof required in such cases is not such standard which is required in a criminal case or in a case adjudicated upon rival contentions or evidence of the parties. As the object of the scheme is to honour and to mitigate the sufferings of those who had given their all for the country, a liberal and not a technical approach is required to be followed while determining the merits of the case of a person seeking pension under the scheme. It should not be forgotten that the persons intended to be covered by scheme have suffered for the country about half a century backhand had not expected to be rewarded for the imprisonment suffered by them. Once the country has decided to honour such freedom fighters, the bureaucrats entrusted with the job of examining the cases of such freedom fighters are expected to keep in mind the purpose and object of the scheme. The case of the claimants under this scheme is required to be determined on the basis of the probabilities and not on the touch stone of the test of 'beyond reasonable doubt.' Once on the basis of the evidence it is probabalised that the claimant had suffered imprisonment for the cause of the country and during the freedom struggle, a presumption is required to be drawn in his favour unless the

same is rebutted by cogent, reasonable and reliable evidence.”

It is, thus, apparent that though the scheme sets out eligibility conditions, the mode of proof and the quantum of evidence required to qualify for a benefit under a scheme cannot be of the same standard as is applied while adjudicating a lis pending before civil or criminal Courts. It would be necessary to mention here that the order passed by the Central Government, makes no reference, to the report of the Sub Divisional Officer, the report of the Deputy Commissioner, the acceptance thereof by the State of Punjab, the certificate issued by Giani Zail Singh and most significant of all that on the basis of similar certificates issued by Giani Zail Singh, the State of Punjab and the Central Government have granted pension to other freedom fighters named herein before.

It would also be necessary to mention here that the reports submitted by the Sub Divisional Officer and the Deputy Commissioner clearly state that old records were not traceable and, therefore, the insistence by the Central Government the production of warrants of arrest or that he should have been taken into custody when the petitioner's husband came over ground, in our considered opinion, is irrelevant or at the most would require a fresh consideration.

We do not desire to opine any further, as to the merits of the case lest we assign an opinion for or against either party. The impugned order, in our opinion, discloses non application of mind, a pedantic approach and an utter disregard of the object and purpose of the scheme.

Consequently, we set aside the orders dated 14.7.2000 passed by the Under Secretary, Government of India and remit the matter for re-

consideration, in accordance with law. As a necessary consequence, the order passed by the State of Punjab dated 30.11.2006 (Annexure-P-11), whereby the pension being paid to the petitioner, has been stopped, on account of the order passed by the Central Government dated 14.7.2000, is also set aside.

With the aforementioned observations, the present petition is allowed and the Central Government is directed to decide the petitioner's claim afresh, within a period of two months from the date of receipt of a certified copy of this order. No order as to costs.

(RAJIVE BHALLA)
JUDGE

6.11.2007
GS

(UMA NATH SINGH)
JUDGE